

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. L 2003020704

O.M.,

Claimant,

vs.

NORTH LOS ANGELES REGIONAL
CENTER,

Service Agency.

DECISION

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, on April 2, 2003, at Lancaster, California.

George Stevens, Executive Director, represented North Los Angeles County Regional Center ("Service Agency").

C.M, mother, represented O.M. ("Claimant").

Evidence was received, the record was closed and the matter was submitted:

ISSUES

1. Should respite hours be reduced from 72 to 40?
2. Should overnight respites be reduced from six per month to zero.
3. Should the number of cases of "pull-ups" Service Agency currently funds be reduced from four per month to two per month?

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FACTUAL FINDINGS

1. Claimant is four and one-half years old and is a client of Service Agency based on a diagnosis of autism and mental retardation. On November 26, 2002, Service Agency signed off on an Individual Program Plan (IPP), based on a meeting held on September 17, 2002. The following quote from that IPP accurately describes claimant's behavior:

She is not toilet trained and requires frequent diaper changes...She frequently soils the couch and/or the floor and will smear feces on furniture, toys and the wall. [She] also requires assistance with bathing and dressing...[Her] behavior is described as not being able to sleep through out the night (the frequency of this behavior is reported to be 6 or 7 nights per week.) Reportedly, once awake [she] stays up for several hours. Mr. and Mrs. M report that they have not really had full nights sleep since [her] birth. Mr. and Mrs. M further report that [she] frequently has tantrums (4 to 5x daily, duration 4 to 6 hours) that consist of throwing herself on the floor, throwing things, banging her head on the wall and the floor, biting, hitting, kicking, and screaming. Mr. and Mrs. M report that these problems occur when [her] routine is changed in the slightest way. Mr. and Mrs. M. report that it is almost impossible for them to do everything the exact same way they did it the day before...her behavior difficulties frequently keep her from participating in daily activities...[she] needs constant supervision to maintain her safety.

2. Not surprisingly, based on her diagnoses and behavior, Claimant receives a variety of services and supports from Service Agency. Perhaps the most important of these is respite, giving the parents a break from taking care of this very difficult child. The parents both testified at the hearing. They are clearly loving and caring people who simply "knock themselves out" taking care of their child. In particular is the difficulty with Claimant's inability to sleep through the night. In fact, she wakes up every couple of hours, demanding (as well as needing) attention. As a result, the parents are constantly fatigued and the father has developed severe headaches as a result of sleep deprivation.

3. Notwithstanding the difficulties, the parents have worked diligently on Claimant's behavior and potty training. Claimant has graduated from diapers to "pull-ups" as part of the training and, according to the father, needs to be changed approximately seven to eight times per day, down from 11 or 12 just a few months ago. The number of pull-ups needed may increase when Claimant is ill, as she is frequently. According to the parents, when Claimant turns age five, MediCal will pay for the pull-ups. The pull-ups come in cases of 88, meaning Service Agency currently supplies 352 pull-ups per month. According to figures provided by the father, Claimant currently uses between 210 and 240 pull-ups per month. If the number of cases provided by Service Agency was reduced to two (176 pieces), Claimant would be left well short of the number needed, and the evidence was quite clear that the parents cannot afford to pay for them (total income is approximately \$1800 per month). However, three cases per month (264 pieces) would adequately cover Claimant's needs.

4. For reasons not fully disclosed by the evidence, Service Agency requested and held, over the parents' objections, another IPP meeting on January 16, 2003, and issued a new IPP on February 10, 2003. In the new IPP, Service Agency continued to fund all of the services set forth in the prior IPP, but cut the respite hours to 40, discontinued the over-night respites and cut the number of pull-ups provided to two cases per month. Parents timely appealed and all services provided in the November IPP are still being funded.

5. At the hearing of this matter, Service Agency presented no evidence of any change in Claimant's condition or the parent's status to support the proposed decrease in services. In fact, all evidence presented was to the contrary. Nothing of substance has changed between the two IPP's, except for the slight decrease in the number of pull-ups Claimant needs per month. Claimant is still a very difficult child, the parents still do not get sleep at night and the task of childrearing has remained as arduous as ever. In short, Service Agency could not justify the proposed reduction in services, while the parents presented sufficient evidence to keep them in place.

6. There was no evidence of the factors, if any, that were relied upon by the Service Agency in making its decision to reduce respite hours. The Notice of Proposed Action states the reduction in hours are to a level consistent with the "family's responsibility for providing similar services to a child without disabilities", citing section 4791(3)(a) of the Lanterman Act, discussed more fully below. However, Service Agency presented no evidence as to how this "responsibility" has changed from the time of the IPP signed in November 2002, to the time of the IPP signed in February, to justify the reduction in services. On the other hand, the parents presented substantial evidence that their need for respite remained the same, if not greater.

Responsibility Under the Law to Provide Services

The Lanterman Developmental Disabilities Service Act was enacted to provide a mechanism by which both the State of California (i.e. the Department of Developmental Services, ("DDS")) and private entities (regional centers) would serve the needs of the developmentally disabled. The Act, at Welfare and Institutions Code¹ section 4501, recites a legislative purpose: "The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge." These obligations include an array of services ranging from preventive services to treatment and habilitation. Those obligations also include the development of and implementation of policies and programs dedicated to the proposition that developmentally disabled persons should be given the opportunity to maximize normalization in everyday living, lead independent and productive lives and avoid placement in unnecessarily restrictive living environments including institutionalization.

¹ All references are to the Welfare and Institutions Code unless otherwise noted.

7. Section 4501 requires the state, through the regional centers, to provide an array of services and supports which is sufficiently complete to meet the needs and choices of each person with developmental disabilities. These are services and supports that will allow them, “regardless of age or degree of disability, and at each stage of life” to integrate “into the mainstream life of the community” and to “approximate the pattern of everyday living available to people without disabilities of the same age.” Persons with developmental disabilities have the right to treatment and habilitation services and supports which foster the individual’s developmental potential and are “directed toward the achievement of the most independent, productive and normal lives possible.” Section 4502. The regional centers will work with consumers and their families to secure “those services and supports that maximize opportunities and choices for living, working, learning and recreating in the community.”

One important mandate included within the statutory scheme is the flexibility necessary to meet unusual or unique circumstances, which is expressed in many different ways in the Lanterman Act. Regional centers are encouraged to employ innovative programs and techniques (section 4630(b)); to find innovative and economical ways to achieve the goals in an IPP (section 4651); and to utilize innovative service-delivery mechanisms (sections 4685(c)(3) and 4791).

8. The evidence established that historically, Claimant’s family had needs for 72 hours of monthly respite services, in addition to 12 hours per of “off-track” respite and six nights per month of over night respite. The Service Agency provided those hours. Claimant’s mother established that the family’s need for respite, based upon cumulative factors, is no different now than when first provided. The Service Agency has not presented evidence that the family’s needs for respite have been reduced. Thus the evidence established there to be no justification for a reduction in any of the respite hours. The evidence further established the level of respite hours currently provided is necessary and appropriate.

9. The evidence did establish that Claimant currently uses three cases of pull-ups per month, as opposed to the four cases per month currently funded.

DISCUSSION AND CONCLUSIONS OF LAW

1. Grounds exist to order the Service Agency to provide continued funding for Claimant’s family to receive respite services at the rate if 72 hours per month, in addition to six overnight respites per month, and in further addition to the 12 hours of extra “off-track” respite.

2. Further, the Service Agency has not demonstrated that Claimant’s family’s present level of respite services is excessive or inappropriate. These services are necessary for Claimant’s family.

The present level of respite was established at a time that a need for an exception to lower funding levels had been established, and accepted by the Service Agency. It is not reasonable for the Service Agency to decide to reduce respite funding when it has not demonstrated any significant reduction in the family's need for respite. There has been no change in circumstances to justify the Service Agency's decision to reduce funding.

3. The present order for respite, as set forth in the IPP dated November 26, 2002 shall be effective until December 30, 2003. However, Claimant's services should be reviewed at the next IPP meeting to determine the levels of services and funding necessitated by the circumstances as they exist at that time, unless there are changes in circumstances that require an earlier review.

4. The evidence established that Claimant's need for pull-ups has been reduced to three cases per month, and it would be appropriate to require Service Agency to pay for that amount. The number of cases per month may be reviewed at a later date, should circumstances change, including but limited to such circumstances as a lessened need for them or the availability of alternative funding sources, such as MediCal.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Claimant's appeal of the Service Agency's decision to reduce funding for respite services is granted. The Service Agency shall continue to provide funding for respite services at the level provided in the IPP signed November 26, 2002 until December 30, 2003, unless there are changes in circumstances that require an earlier review. Service agency shall pay for up to three cases of pull-ups per month until such time as Claimant requires a lesser amount or an alternative funding source is available.

DATED: April , 2003.

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

NOTE: This is a final administrative decision. Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receiving this decision. [Welfare and Institutions Code section 4712.5(a)]